## INDIANA ENGINEERING SOCIETY.

### President's Address—Wray Law Criticised—Papers and Discussions.

The Indiana Engineering Society convened for the fourteenth time yesterday. The session began at 2 p. m. William M. Whitten, city engineer of South Bend, presided. The principal feature of the afternoon session was the annual address of the president.

Mr. Whitten noted the fact that there is need for more careful attention to the details of work affecting the sanitary condition of houses. Plumbers are not sanitary engineers, and the workmen know very little about the principles and practice of sanitation. He criticised the Wray law for changing the basis of assessments for local sewers from a basis of benefits conferred to one strictly of frontage of abutting property and gave instances of the injustice of its application. He referred to the fact that cracks have been found in clay soil which indicate droughts to have occurred, previous to the settlement of the country by whites, which were more severe than any known since that time, as proof that drainage is not the cause of droughts. He recommended the use of the Elkinton system of draining springy or boggy marshes.

He referred to the completion of the removal of the celebrated limestone ledge in the Kankakee river at Momence, Ill., and the methods of draining the Kankakee marshes. He also made some observations as to the existence of a pre-glacial outlet of Lake Michigan, of which this ledge is said to be a part of the evidence.

He advocated the use of crushed boulders for road metal in the absence of good gravel.

President Whitten's address called out a spirited discussion. J. E. Alter detailed in a humorous style his experience in allotting drains for repairs. "The Location, Designing and Construction of Drains" was the title of a paper by L. A. Bostwick, of Rensselaer, which was largely technical, dealing with the construction of drains in accordance with scientific principles. He advocated the use of Keettor's formula for determining capacity. The paper was criticised by some gentlemen present, who thought Mr. Bostwick was attempting to "improve upon nature."

At the evening session R. I. Morrison, of Knightstown, gave a description of the first English railway and its equipment, which was especially interesting because Mr. Morrison detailed some of his own personal experiences.

A paper by Hiram Bumer, of LaPorte, dealt with certain difficulties encountered in constructing streets under the special assessment laws.

John W. Fawcett, of Delphi, read a paper entitled "Bad Description in Deeds," which was received with marked favor.

### Traveling Men of the State.

The Commercial Travelers' Association of Indiana will hold their nineteenth annual convention at the Board of Trade hall, the first session to begin at 10:30 Friday morning. Several changes in the constitution of the association are proposed, and as other important matters are to come up it is expected that there will be a large attendance. One of the proposed changes is to have the amount of the treasurer's bond increased. Mayor Denny will make the welcoming speech.

### The Reform School.

There were 483 boys in the Reform School at the close of the month, only one of whom was unable from sickness to attend the Christmas exercises. All except eleven of the 483 are able to write letters, in which they express their ideas in good penmanship and appropriate language. The school is one of the best of its kind in any of the States.

### Marriage Licenses.

Marriage licenses were issued yesterday to Philip August Wacher and Fannie Myers, Joseph N. Morgan and Alice M. Britton, Andrew F. Smith and Dode I. Perkins, D. Webster Harter and Mae Moore.



# THEY WILL NOT HANG

## Parker and McAfee Given a New Trial by the Supreme Court.

### Important Points of Mrs. Eyster's Testimony in the Trial Should Have Been Ruled Out.

### CONVICTION NOW DOUBTFUL

### Substance of the Opinion Written by Judge Coffey.

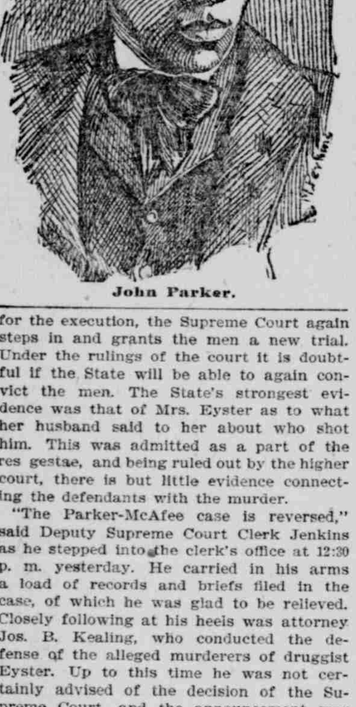
### Opinion of the Prisoners' Attorney—How the Condemned Men Received the News.

John Parker and Edward McAfee, convicted in the Criminal Court of the murder of druggist Charles Eyster, have been given another lease of life by the action of the Supreme Court yesterday. The judgment of the lower court is reversed and the defendants will have a new trial. This is the second time the Supreme Court has stepped in just upon the verge of the day set for the execution of the two men. They were first sentenced to be hanged on Nov. 4, 1893. Just a few days prior to that time the date was postponed till Friday, Jan. 5, 1894, to permit the Supreme Court to hear oral argument upon the case, and now, just three days prior to the second date set

John Parker.

for the execution, the Supreme Court again steps in and grants the men a new trial. Under the rulings of the court it is doubtful if the State will be able to again convict the men. The State's strongest evidence was that of Mrs. Eyster as to what her husband said to her about who shot him. This was admitted as a part of the res gestae, and being ruled out by the higher court, there is but little evidence connecting the defendants with the murder.

"The Parker-McAfee case is reversed," said Deputy Supreme Court Clerk Jenkins as he stepped into the clerk's office at 12:30 p. m. yesterday. He carried in his arms a load of records and briefs filed in the case, of which he was glad to be relieved. Closely following at his heels was attorney Jos. B. Kealing, who conducted the defense of the alleged murderers of druggist Eyster. Up to this time he was not certainly advised of the decision of the Supreme Court, and the announcement was received with great satisfaction by him. He immediately repaired to the cigar stand in the Statehouse corridor and returned with an overcoat pocket bulging out with cigars, which he dispensed with a generous



Edward McAfee.

hand to the office employes, reporters and State officials who came in on learning that a decision had been reached favorable to the defendants Parker and McAfee.

Attorney Kealing said: "I have not for one minute believed the decision would be otherwise, as the errors in Judge Cox's rulings were flagrant and could not possibly be overlooked by the court of last resort, as two lives were placed in jeopardy by the bias of a Criminal Court judge. I have nothing further to say other than to express the great satisfaction I feel under the circumstances. I do not believe that Parker and McAfee were guilty of the Eyster murder, and think we will be able to show that they were not in the next trial of the case."

### THE COURT'S DECISION.

**Substance of the Opinion Written by Judge Coffey.**

The opinion is by Judge Coffey, and is substantially as follows:

"The appellants were jointly indicted in the Criminal Court of Marion county upon a charge of murder in the first degree. The indictment charges, among other things, that the appellants, at Marion county, on the 14th day of April, 1893, murdered one Charles Eyster by then and there shooting and mortally wounding him. A trial by jury resulted in a verdict finding them guilty as charged and affixing the death penalty. Over a motion for a new trial the court rendered judgment on the verdict, from which this appeal is prosecuted.

"The appellants assign as error the action of the court in overruling the motion for a new trial.

"The uncontradicted testimony in the case established the fact that between 9 and 10 o'clock in the evening of the 14th day of April, 1893, two colored boys entered the drug store of Charles Eyster, at the northwest corner of Mississippi and Third streets, in the city of Indianapolis, and purchased a set of dice. Almost immediately after stepping out of the store they returned, and one of them shot Eyster with a revolver, inflicting a wound from which he soon thereafterwards died. The effort of the State, on the trial of the cause, was to identify these appellants as the persons who were guilty of the murder of Mr. Eyster. The evidence introduced by the State for that purpose was chiefly circumstantial."

The court then took up the assignments of error, and holds that the trial court did not err in permitting the State to prove, as showing malice and motive, the use of the telephone in Eyster's drug store for the purpose of calling the patrol wagon when the appellants were under arrest upon a former occasion, and that upon one of these occasions Mr. Eyster himself called the patrol wagon, nor in permitting evidence to be admitted showing threats on the part of the appellants, of a general nature, if Eyster was included in those embraced in the threats.

MRS EYSTER'S TESTIMONY.

Upon the testimony of Mrs. Eyster the court says: "Mrs. Eyster, the widow of the deceased, testified in the trial of the case, that she and her husband lodged up stairs over the drug store in which Eyster was shot; that she went upstairs to prepare the bed for the purpose of retiring for the night, leaving the appellants and her husband in the store. Soon after reaching the first room upstairs she heard the report of a revolver which seemed to be immediately under where she stood; that she ran down the hallway towards the stairway leading to the rooms above the drug store, and when about midway of the hall her husband fell into her arms and exclaimed, 'My God! Manda, I am shot. I dragged him to the bed and he said: 'Those two colored fellows stepped to the door and returned back and shot me.'"

The prosecution then propounded to the witness the following question: "To refresh your recollection I will ask if he didn't say this, 'Those colored fellows that were in there when you were there are the ones that shot me.' To which the witness answered, 'Those are the words he used.'"

These declarations were admitted in evidence over the objections of the appellants. It further appears from the evidence that the deceased was shot in his drug store after which his assailant immediately fled and was not present at the time these declarations were made. The declarations were admitted in evidence upon the grounds that they were a part of the res gestae.

It is contended by the appellant that in admitting this evidence the trial court erred.

It is a familiar rule that whatever constitutes a part of the res gestae—the act under immediate investigation—is admissible as original evidence. There is, in this State, no uncertainty or confusion as to the rule itself. * * * In the nature of things, every act has a beginning and an end and it is difficult to perceive how that which occurs after the principal act is at an end can constitute a part of the act under investigation. It has been settled in this State that an act cannot be varied, qualified or explained either by declaration, which amount to no more than a mere narrative of a passed occurrence, or by an isolated conversation held, or an isolated act done, at a later period. In the case of Jones vs. the State it was said: "The length of the interval of time between the main fact and the statements cannot be important, if such time elapsed as to make the statements, having regard to their form and substance, mere narrative."

It may now be regarded as the settled law in this State that a declaration which amounts to no more than a mere narrative of a past occurrence is not admissible in evidence as a part of the res gestae.

EYSTER'S DECLARATION.

The declaration of Eyster, when he met his wife, that he was shot, was admissible, because it was explanatory of his then condition, but his other declarations as to who shot him and the manner in which the shooting occurred was a mere narrative of a past event. In admitting this evidence, we think, the learned judge presiding at the trial of this cause, erred.

The court also holds that it was error in the trial court to instruct the jury that a failure of the appellants to account for their whereabouts during all the time within which the alleged crime might have been committed, was a fact which might be properly considered by the jury in connection with any other evidence in the case tending to prove guilt.

The court also holds that the trial court erred, in not giving to the jury the instructions prayed by the appellants upon the doctrine of reasonable doubt. The failure to instruct the jury that no conviction could be had so long as any juror entertained a reasonable doubt of the guilt of the defendants is also held to be error.

In conclusion the court says: "Many other rulings of the trial court are complained of as erroneous, but as they are of such a character as that they may not arise upon another trial of this cause, we deem it unnecessary to examine them."

For the errors above indicated the judgment in this case must be reversed.

The judgment in this cause is reversed with directions to the Criminal Court of Marion county to sustain the motion of the appellants for a new trial.

### PRISONERS RECEIVE THE NEWS.

**Warden French Relieved—Preparations for the Hanging Ceased.**

Special to the Indianapolis Journal.

MICHIGAN CITY, Ind., Jan. 2.—Parker and McAfee received the news that the Supreme Court had granted them a new trial at 3 p. m. to-day. The first intimation of the decision of the court came in a message to Parker from his attorneys, and it was followed shortly after by one from the clerk of the court imparting the news to Warden French. The most evident satisfaction was noticed in the two men when the Warden read them the messages. It was also plainly seen that the Warden was relieved, and he made no secret of the fact that it was welcome news which relieves him of the responsibility of executing two human beings. For the first time since they have been in the custody of the Warden they were to-day allowed to be interviewed, as the granting of a new trial suspended the restriction of the statute in this particular. To a Journal representative the two negroes who have been counting the minutes until Friday morning were quite willing to talk in regard to their case. It was plain from their manner that the extraordinary nerve they have been displaying during the long months had nearly broken down and their agitation was displayed by their trembling hands and shaky voices.

Parker stated that he had never lost hope of a favorable answer by the Supreme Court to their petition, although the near approach of the date set was not encouraging. McAfee appeared to have preserved his nerve the better of the two men and affected not to have been at any time disheartened. They had no information as yet as to when the new trial would take place, but were in hopes it would be in a few days. During their confinement, which has been in adjoining cells, they have been permitted each day a few minutes' exercise in the corridors of the cellhouse. They speak in the highest terms of their treatment by the officials and have nothing to complain of.

Preparations for the execution have been going on during the past week. A scaffold and trap were erected in the dungeon department of the south cellhouse not far from where the condemned men were. This room has been selected as the spot where executions under the new law are to take place, and where Parker and McAfee will be hanged if the new trial should go against them. As soon as official papers are received from the Supreme Court the two men will be taken to Indianapolis to await the trial.

### WHACKED THE WILSON BILL.

**Marble and Granite Men Declare that It Will Reduce Wages.**

The State Association of Marble and Granite Dealers met yesterday at the Grand Hotel. This was a continuation of the meeting of Monday, except that only this State was represented. There had been an effort to merge the State association with the national, but the committee appointed for the purpose of investigating the matter, after thoroughly considering the question, reported against giving up their local organization.

The following officers were elected for the ensuing year: President, D. E. Hoffman, Winchester; vice president, J. B. Schrichte, Rushville; second vice president, Fred C. Bandel, Crawfordsville; third vice president, Schuyler Powell, Logansport; fourth vice president, J. P. LePage, Indianapolis; secretary and treasurer, T. F. Gaebler, Rockville. The old board of directors was continued for another year.

The following resolution was passed unanimously: "Resolved, That it is the judgment of this association, regardless of our political faith, that a reduction of the tariff on marble and granite, as proposed by the Wilson bill, now pending in Congress, would be very disastrous to our trade, and necessitate a general reduction in wages. The secretary is hereby instructed to send a copy of this resolution to each member of Congress from Indiana."

The meeting then adjourned, to meet again some time in July, the time and place to be announced later by the president.



# THAT FIVE THOUSAND

## Colonel Lilly's Statement to the Commercial Club Directors.

### He Assumes Full Responsibility for the Allowance to Mr. Fortune and Tells Why It Was Made.

The Commercial Club directors met yesterday afternoon and transacted a large amount of routine business. Among other things Louis Hollweg was appointed as treasurer of the relief committee. The resignations of Horace E. Smith, George A. Woodard and George C. Haerle were received and accepted. S. D. Noel was taken into the membership of the club. The important feature of the session occurred at 5 p. m., when President Lilly called Vice President Foster to the chair and submitted the following statement:

"To the Board of Directors of the Commercial Club:

"Gentlemen—Since your last meeting the propriety of a certain expenditure by myself as chairman of the citizens' executive board for the twenty-seventh National Encampment, G. A. R., has been called in question. Inasmuch as the fund thus disbursed was a portion of the fund paid in by citizens to the Commercial Club committee on assemblages, I deem it proper and right that I should account to you for my action in the premises, giving you the facts upon which my judgment in the matter is based.

"Exceptions are taken in that I caused to be paid to William Fortune, executive director of the twenty-seventh National Encampment, the sum of $5,000 for his services in that capacity, when he was already receiving a salary as secretary of the Commercial Club. Now, to prove I did right in this, I must satisfy you that I regarded William Fortune as an employe of the citizens' encampment organization, that he rendered service to the value paid for, and that he was not otherwise paid for the same service. I shall undertake to prove precisely those things.

"After the assemblage committee of the Commercial Club, under the direction of Mr. D. P. Erwin, chairman, secured the encampment for Indianapolis, that committee held a meeting and asked me to take charge, as chairman, of a citizens' executive board to be formed. Mr. Fortune was sent by the committee to Wawasee, where I was taking my vacation, with the request. I sent Mr. Fortune back to the committee with the understanding that I would do so if I could have absolute control of the expenditure of all moneys, and that I should have William Fortune as my chief executive aid. These demands were made for the reason that an entire departure was contemplated by Mr. Fortune in the management of the Indianapolis encampment as compared with any held before, and his plans, adopted by the assemblage committee, and finally by the citizens of Indianapolis at a public meeting at the Grand Opera House, Dec. 13, 1892, marked the first attempt to place any encampment of the G. A. R. on a strictly business basis.

"The authority given me at that meeting was absolute. The executive board was made advisory only, and no committee could expend a dollar. The usual methods in other encampment organizations allowed the executive board to vote money on recommendation of the various committees.

"After the formation of our committees, some thirty in number, the chairmen were all personally impressed with the necessity of economy, and asked to bring in estimates. These estimates of the thirty committess were gone over by Mr. Fortune, harmonized into a programme for the week and reduced to the lowest possible cost consistent with the proper demands of the occasion. We went over the work together and made final decisions, when it became my duty to meet the various committees and impress them with the importance of accepting our plans, which was done in every instance.

"The result was that out of $120,000 at our disposal but $66,000 was expended, and I believe that no additional expenditure would have added anything of value to the occasion. While there was a saving on nearly every committee, as compared with Washington, where the encampment cost $148,500, the largest item of saving in our work was on accommodations, which was not given out to any committee, but was solely in the hands of William Fortune, and which he closed up at an expense of less than $21,000, making a saving of more than $50,000, and taking care in free quarters of nearly, if not quite, as many men as were accommodated in Washington. No other encampment since 1889 has cost less than $106,000.

"That William Fortune was regarded by me as an employe, and that he was to be paid for his service as executive director, I affirm, although he performed that service in a manner far above and beyond any reasonable demand that could be made upon a salaried man. To support my affirmation, I will say that the average annual earnings of William Fortune for five years before the organization of the Commercial Club exceeded his present official salary. When he was made secretary he was paid $2,000 per year, with the explicit understanding on the part of the directors that he would continue other work affording him a larger income than the salary paid him. Later, when Mr. Fortune's salary was increased to $2,400, a resolution was passed by unanimous vote of the directors declaring that they believed this sum insufficient for the service he was performing, and that it should be increased when the finances of the club would permit it. When, still later, the salary was increased to $3,000 by the unanimous vote of the directors, there was expressed recognition of the fact that this was the pay of the service performed, and was not to be regarded as the salary of the position for a man who had not demonstrated equal value. While performing his duties faithfully and in a manner satisfactory to the directors in the highest degree, he continued to earn a larger additional income, as we explicitly understood, and this without any neglect of or interference with his official duties. However, in October, 1892, when Mr. Fortune took up the encampment work proper as executive director for the citizens' executive board, he gave up his additional earnings, and from that day until the end of the encampment, a year of time, devoted himself to the work nearly eighteen hours a day, Sundays included.

"When he was elected executive director his duties as secretary of the Commercial Club were separated from those of executive director of the citizens' organization in charge of the encampment. The only connection the Commercial Club had after that date with the encampment was in the fact that its members raised funds to carry on the work and paid it over to the citizens' organization as required for expenses.

"During the time Mr. Fortune was executive director he kept up the large and very important work of the club in the most satisfactory manner, a work which is usually done in the regular time of about eight or nine hours office work a day.

"Now, if there is any reason why, as an officer of another organization, he should double his working hours for a whole year, without compensation, and at the same time surrender a large income which he was earning in addition to his salary as secretary of the Commercial Club, I utterly fail to see it.

"Now, further, in the first place, I would not accept the chairmanship unless I could have William Fortune as executive director, and, later, when the work was becoming very heavy and the financial prospects not assuring, I told him I did not know if ever he could be paid adequately for the work he was doing. He stated that he had nothing to say on that point, that the main thing was to do the work creditably, and the amount of compensation could be left for consideration at the close of the work. When the end came we had administered a fund of $120,000; only $61,000 had been expended. The saving of $59,000 had been made by William Fortune's untiring labor performed in excess of any duty required of him in any other work.

"My judgment was, therefore, that William Fortune should be paid $5,000 for his services, thus making the total expense of the encampment $66,000.

"In making this decision I consulted Mr. John W. Murphy and Mr. Albert Sahm, members of the auditing committee, who, knowing all the circumstances, fully agreed with me. The entry was made, was passed upon by the auditing committee, whose only duty, however, was to certify that expenditures made were properly authorized.

"I desire to say in the most unequivocal manner that the entire responsibility of fixing Mr. Fortune's salary is with myself. I was glad to have the approval of the gentlemen to whom I submitted my views. They are men of such character and experience that if I could not get good business judgment from them I would not know where to go for it. I did right, and what was right then is right now and will always be.

"The statement that the payment was kept secret is untrue. It was treated as every other single item in the routine work. I thought no more of the allowance than of any other just obligation. It was known by all the members of the auditing committee who signed the report, by the treasurer, Albert Gall, and his clerks and many others and no one was enjoined to secrecy, nor was it thought of.

"I doubt if the actual labor of any two executive officers of the world's fair at Chicago exceeded, during the same time, that of Mr. Fortune and myself on the encampment work. As far as my part is concerned it cost nothing. I was glad to give it, although I gave up all my plans and abandoned my private business for a year. I was given full authority to act, and if I had not employed the best executive ability I could find to do the hard detail work and paid for the service after its value could be determined I would by no means have fulfilled my measure of duty to the citizens of Indianapolis, who so fully gave me their confidence.

"I think that, in view of the facts, that no fair-minded person will say Mr. Fortune was not entitled to a salary as executive director, and that his salary as secretary of the Commercial Club had nothing to do with it. If he was entitled to a salary it is only a question of judgment as to the amount. My judgment said $5,000. It still says so. I respectfully submit this statement. ELI LILLY."

The statement was ordered spread on the records of the club, and printed copies will be sent to each member. Colonel Lilly stated that he desired early consideration by the board of what disposition shall be made of the $12,000 now in the assemblage fund of the club. A motion was adopted directing the assemblage committee to employ legal counsel and report on the law and facts in connection with the disposition of the balance in the hands of the committee.

### ROBBED OF HIS SPARKLER.

**Bold Theft of a Diamond on a Crowded Street Car.**

Barney Schonfield, an employe of the Arcade Clothing Company, was the victim of a bold diamond robbery about 6:30 o'clock last night. With his wife, he was on his way to his home, at No. 81 Park avenue. He boarded a College-avenue car at the corner of Washington and Illinois streets, and Mrs. Schonfield stepped inside, while her husband stood on the platform. When the car passed on to Massachusetts avenue at Pennsylvania street the trolley slipped from the wire and the lights in the car were extinguished. In the darkness Schonfield noticed that three men were doing a good deal of unnecessary pushing about him, and as the light flashed up again he felt a vigorous pull at his necktie. At the same moment a short, thick-set man jumped from the platform and disappeared. Schonfield felt for his scarf pin, a three-karat diamond. It was gone, as was also the thief.

The victim left the car and at once notified the police, but no trace of the bold robber could be found. It is thought that the thief had two accomplices on the car, and that it was through the pushing and shoving of these two fellows that he was enabled to secure the pin. The diamond was valued at $275. Schonfield believes that he can identify the guilty man if he is given an opportunity.

### SUPPOSED POSTOFFICE THIEF.

**James Dickson Charged with Robbing the Government at Clermont.**

James Dickson, a young man of uncertain reputation, was arrested yesterday by officers Duty and Lyons and charged with burglary and grand larceny. The presence of a large quantity of coppers and about four hundred postage stamps on the prisoner's person led the officers to believe that he is familiar with the details of a recent postoffice burglary.

On the night of Dec. 17 the postoffice at Clermont was robbed. The safe was blown open and stamps and cash to the amount of $60 was carried off. On the following morning, it is claimed, Dickson walked into the Haymarket saloon at an early hour and spent a considerable number of one-cent coins. Since that date Dickson has been living here, but has been pretty closely shadowed. Yesterday afternoon officer Duty found him in the basement of the Capitol Hotel engaged in beer drinking with some companions. The officer did a neat piece of detective work and succeeded in capturing his man and the evidences of guilt. Dickson denies the charges.

### Calumet Club Officers.

At the meeting of the Calumet Club last night officers were elected for the ensuing year as follows:

President, R. M. Baker; vice president, J. M. Akin; recording secretary, C. J. Pringer; financial secretary, J. J. Reilly; treasurer, G. W. Kevers; marshal, George Schad; sergeant-at-arms, P. F. Costello; directors, Henry Loebenberg, J. T. Austin, Joseph Wright, R. H. Strouse, F. C. Reaume.